



6 October 2004

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WCB Docket Nos. 96-98 and 99-68

Dear Ms. Dortch:

In the context of the pending forbearance petition of Core Communications in the above-referenced dockets, the Commission is considering whether to maintain its so-called growth caps and new market rules related to Internet Service Provider (ISP) – bound telecommunications traffic. The Association for Local Telecommunications Services (ALTS) urges the Commission to recognize that these interim measures, adopted five years ago, serve no valid purpose, and indeed are causing discriminatory disruption in the telecommunications marketplace. For the reasons set out below, ALTS believes that these rules must be eliminated immediately, as part of the Commission’s disposition of the Core forbearance petition.

First, the interim growth cap and new markets rules create a disincentive for competitive local exchange carriers (CLECs) to serve ISPs, because CLECs will receive no compensation for terminating a certain volume of traffic to them. CLECs, rather than suffer such losses from nonrecovery of costs, will be forced to shut off ISPs in rural and low-income areas of the country. Because incumbent carriers generally do not serve these ISPs, Internet access for consumers in rural and low-income areas will be severely curtailed, if not discontinued entirely. This runs directly counter to the Administration’s goal of promoting widespread Internet access, particularly in rural and low-income areas that may not yet have broadband access. Dial-up access services are critical to bringing the Internet to consumers residing in sparsely populated or less economically privileged locales. Consumers that cannot get broadband, cannot afford broadband or simply do not yet have the demand for broadband rely on affordable dial-up Internet access. In short, dial-up is an important entry-level product that will spur additional demand for broadband. Preservation of measures that deny consumer access to such Internet services contravenes numerous Internet-related public policy initiatives undertaken by the Administration and the FCC.

In 1999, when the Commission adopted interim measures, including growth caps and the new markets rule, the Commission expressed concern that the increasing volume of dial-up Internet-bound traffic would impose too great a cost burden on incumbent carriers. The illogic of regulatory protection of incumbent bottom lines aside (particularly illogical given that it is the ILECs that set the compensation rates, not their competitors), the Commission's expressed concerns are no longer valid. The exponential growth of dial-up Internet access has dissipated with the increased availability and demand for broadband, notwithstanding the fact that dial-up access remains important to rural areas of the country and for low-income consumers. Thus, the growth cap and new market rules dampen competition and discourage investment in the important dial-up Internet access market without any concomitant benefit. These interim rules raise barriers to competitive entry, protect incumbent LEC ISP affiliates against competition from competitors and new entrants, and limit independent ISP service options and consumer choice.

Second, now that the reciprocal compensation rate for ISP-bound traffic has been reduced artificially by the federal rate of .0007 cents per minute, that rate should, at least until the Commission completes its holistic review of intercarrier compensation, allow competitive carriers to recover their costs of terminating traffic for the incumbents. By contrast, in new markets or where growth caps are reached, CLECs are now actually being forced to subsidize the incumbents by providing free terminating service. The growth cap and new market rules draw arbitrary distinctions among carriers – for example, those that are in some markets and not others, those who entered a particular market after a particular date, those that have varying levels of traffic, and similar distinctions -- that have no basis in the Act. The interim purpose for which the rules were adopted – the disparate decisions that established a state-by-state system of compensation – is not longer valid, because of the establishment of a federal rate. Thus, the growth cap/new market rules no longer serve any purpose. Moreover, the growth cap and new market rules effectuate different regimes for ISP-bound and voice traffic, even though the Commission is in the process of developing an omnibus, unified approach to intercarrier compensation.

Third, the current rules are flatly discriminatory. By grandfathering some carriers and excluding others, the interim rules actually diminish competition in the market for ISPs -- by providing beneficiaries of the rule with a regulatory advantage. The growth cap and new market rules discourage facilities-based CLEC investment and the expansion of competitive service offerings to existing and new markets. The growth cap and new market rules also raise barriers to entry by denying new carriers the ability to receive reciprocal compensation for performing the same functionalities they must pay others for, including the incumbent LECs. This barrier to entry is a barrier to investment that jeopardizes the availability of affordable Internet access choices for all consumers. ILECs generally serve only their own affiliated ISPs, not independent ISPs, and thus thousands of ISPs that rely on CLECs for connectivity could lose their access to end users. The growth cap and new market rules give the incumbent LECs a free ride on the networks of their competitors – CLECs cannot receive any compensation for ILEC traffic terminated to CLEC ISP customers.

Fourth, the ILECs have abused the rules repeatedly in recent years. Verizon, for example, is taking the position that when a CLEC buys another CLEC out of bankruptcy, the markets served by the acquired LEC are new markets for the acquiring CLEC and thus not eligible for compensation. This is not only anticompetitive, but is an impediment to otherwise efficient consolidation in the CLEC industry. Incumbent LECs have also attempted to use these rules to deflate the value of competitive LEC consolidations by claiming that growth cap entitlements of previously separate competitive LECs may not be combined in the event of a merger. Consolidation is widely seen as being necessary to ensure the health of competitive wireline providers. Incumbent LEC gaming of these rules discourages and diminishes incentives for consolidation.

For these reasons, the Commission should immediately eliminate the so-called growth caps and new market rules. Please do not hesitate to contact me if you need any additional information.

Respectfully submitted,

/s/ Jason Oxman

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